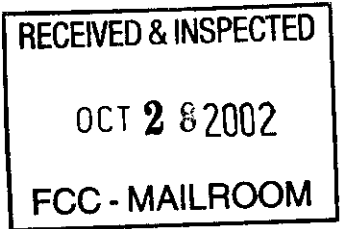


ORIGINAL



Electronic Frontier Foundation

EX PARTE OR LATE FILED



October 17, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: *Ex parte* presentation in MB Docket No. 02-230

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, I write to report an *ex parte* meeting with a staff member of the Commission in connection with the above-referenced proceeding. I am enclosing two copies of this letter and two copies of an outline which we distributed at our meeting.

On October 10, 2002, Jonathan Cody, of the Commission's staff, met *ex parte* with Cindy Cohn and Seth Schoen, representatives of the Electronic Frontier Foundation (EFF).

Our discussions concerned digital broadcast copy protection (MB Docket No. 02-230), substantially as presented in the enclosed outline.

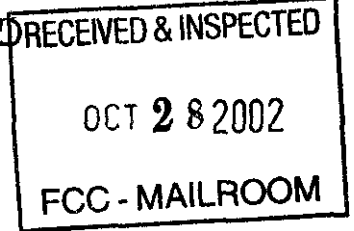
Sincerely,


Seth Schoen

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EFF Notes for FCC

October 10, 2002

The Electronic Frontier Foundation (EFF) is the world's oldest on-line civil liberties organization, founded in 1990. We are a member-supported non-profit advocacy organization based in San Francisco, CA, and host one of the world's most linked-to websites at www.eff.org. EFF has been a leading voice for the preservation of civil liberties and individual rights in the digital world. EFF's newsletter reaches over 30,000 subscribers on a weekly basis. EFF was the only civil liberties organization and the only non-profit organization that participated in every meeting of the Copy Protection Technical Working Group's Broadcast Protection Discussion Group.

EFF publishes a web site about the BPDG broadcast flag negotiations and related policy issues. The web site serves as a leading source of public information about these questions. It may be found at

<http://bpdg.blogs.eff.org/>

We appreciate the opportunity to meet with Commission staff, and we also intend to file formal comments with the Commission in MB Docket No. 02-230.

* EFF supports DTV adoption

- * Difficulties with the adoption of DTV are well-known.
- * As the Commission is aware, many factors contribute to the problem, and there are a variety of current Commission actions related to it
- * The availability of content for terrestrial broadcast is an area which has seen substantial progress, with major networks committed *to* offer their entire prime-time line-ups in digital HD.
- * A variety of other programming is becoming available, including native-format HD programming from providers such as HDNet, which *has* invested \$112 billion in HD content.
- * High cost of new TV equipment continues to dissuade many prospective viewers. Consumer education and uncertainty are also relevant.

* A broadcast flag mandate would create many problems

- * We expect to address these in detail in our formal submission; briefly, they include:
 - . Prohibiting open source sector participation in DTV
 - . Driving a variety of participants out of the market

- . Economic losses and limits to technical innovation
- . Constitutional issues
- . Preventing low-cost open source technology solutions from addressing DTV consumer cost problems
- . Hindering competition in DTV and related digital video markets.
 - . Creating new barriers to entry.
 - . Limiting the selection of available components.
 - . Limiting interoperability between devices.
 - . Increasing costs to manufacturers and consumers.
- . Preventing reverse engineering
 - . Legitimate reverse engineering is economically significant,
 - . facilitates innovation,
 - . is a standard industry practice,
 - . and is expressly protected by law.
- . Curtailing lawful uses of broadcast programming by TV viewers
 - . Existing consumer expectations include fair uses and uses outside the scope of copyright law.
 - . Traditionally, new technologies, products, and services have been developed over time. Copyright law, too, continues to develop in response to these changes, **so** that new fair uses are discovered which could not have been anticipated in the past.
 - . DTV transition adds value to television broadcast and can permit the creation of a variety of new **uses**, some of which can be identified now and some of which are still not explored.
 - . A broadcast flag mandate would curtail those opportunities and freeze the development of many new technologies at a particular historical moment. (The VCR is a historical example of a new technology which caused a great deal of anxiety when introduced-- but turned out to be a tremendous boon to consumers, as well as to content companies which had opposed its introduction.)
 - . It's important to protect innovation and not halt the evolution of the fair use doctrine.
- . FCC jurisdiction in this area **is** uncertain.
- . A broadcast flag mandate is not an appropriate or effective measure
 - . Arguments about the supposed effect of DTV transition on Internet-based copyright infringement are technically weak and empirically unsubstantiated
 - . Most copyright holders have not insisted on such a mandate.
 - . The success of existing efforts to offer digital HD programming appears to make such a step unnecessary.
 - . The broadcast flag measure is not effective at addressing Internet-based copyright infringement, **as** a technological matter.
 - . Engineers generally recognize that the protection afforded by this measure is extremely weak.
 - . The broadcast flag rules proposed by BPDG can't solve the problem

- . Misconceptions about high-definition broadcast as a source of copyright infringement abound
- . EFF is happy to provide technical detail in support of these claims, and we will include such detail in our formal submission.
- . Other paths to DTV transition
 - . Although the Commission has already undertaken to address the availability of ATSC tuners in TV equipment, the current generation of ATSC-capable televisions is well out of reach of many potential viewers' budgets.
 - . Most American homes already have an HD-capable display device! The device is a computer monitor.
 - . Computer monitors have had around 1,000 lines of vertical resolution for years. In 2000, 51% of U.S. homes owned at least one PC; this number continues to climb rapidly.
 - . Better personal computer support for DTV applications appears to be a practical and low-cost way for most households to get started viewing DTV broadcasts.
 - . DTV-receiving interfaces for personal computers currently cost as little as \$300, dramatically cheaper than current-generation HD-capable sets. This equipment is likely to get even cheaper very quickly as a result of "Moore's Law" for semiconductor products.
 - . Open source software can perform display functions, and software demodulation capability is being actively developed. Such software is typically available to end-users at little or no cost.